

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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**STB EX PARTE NO. 684**  
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Public Record

**SOLID WASTE RAIL TRANSFER FACILITIES  
REVISED INTERIM RULES WITH REQUEST FOR COMMENTS**

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**REPLY COMMENTS OF THE NEW JERSEY  
DEPARTMENT OF ENVIRONMENTAL PROTECTION AND  
THE NEW JERSEY MEADOWLANDS COMMISSION**

The New Jersey Department of Environmental Protection ("NJDEP") and the New Jersey Meadowlands Commission ("NJMC") (collectively referred to as "New Jersey") submit these reply comments to the Surface Transportation Board ("Board") in the above captioned Rulemaking. Specifically, New Jersey replies to the comments filed by the American Association of Railroads ("AAR").

The AAR generally argues that the Surface Transportation Board ("Board") exceeded its statutory authority in its Revised Interim Rules with Request for Comments. New Jersey believes that the AAR is incorrect. Under 49 U.S.C. § 10909(a)(1), the Board may issue a land use exemption if "the Board finds that a State, local, or municipal law, regulation, order or other requirement affecting the siting of such facility" first, "unreasonably burdens the interstate transportation of solid waste by railroad"; second, "discriminates against the railroad transportation of solid waste and a solid waste rail transfer facility"; or third, "a rail carrier that owns or operates such a facility petitions the Board for such an exemption." Id. The statute further sets forth the standard for review for the Board to apply. 49 U.S.C. § 10909(c). "The Board may only issue a land-use exemption if it determines that the existing or proposed location does not pose an unreasonable risk to public health, safety, or the environment." Id. The statute sets forth numerous factors for the Board to consider. 49 U.S.C. § 10909(d).

Contrary to the AAR's comments (e.g., AAR Comments at 3-4), the Board properly recognized that the Clean Railroads Act ("CRA") utilizes the "unreasonable burden" and "discriminates" criteria "as important considerations in whether to grant a permit." (Decision at 21-22.) Thus, contrary to the AAR's assertion (AAR Comments at 4), the statute does not limit the application of these factors to when an applicant receives an unsatisfactory decision from a state or local authority. See 49 U.S.C. § 10909(a).

The AAR states its support for "the environmental, public health and public safety goals underlying the CRA as applicable to solid waste rail transfer facilities." (AAR Comments at 6.) And the AAR also appears to recognize the likelihood of overlap between laws "affecting siting" and environmental, public health and public safety laws. (See, e.g., AAR Comments at 13.) Nevertheless, the AAR balks at the Board's reasonable statutory interpretation of the CRA to properly consider the specified factors when determining whether to grant or deny a land use exemption permit, as well as the Board's consideration of whether the law falls under the State's traditional police power.

The CRA was intended to limit the Board's authority, and to ensure proper oversight and management of solid waste rail transfer facilities. As New Jersey stated in its initial comments on the revised interim rules, New Jersey supports the Board's new requirement at § 1155.21(a)(7) that an applicant state whether the law from which exemption is sought is an environmental, public health or public safety standard that falls under the state's traditional police power, and for an explanation if the applicant or interested party claims it is not. The states' traditional police powers remain intact, and New Jersey expects that the Board's consideration of land-use-exemption permit applications will give due deference to the states' exercise of their long-standing police powers to protect the public health and safety. New Jersey believes that nothing in the CRA restricts the Board's authority on this point.

Respectfully submitted,

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